

Monday, 1 July, 1946

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
CONFERENCE ROOM OF THE TRIBUNAL
Room 217
War Ministry Building
Tokyo, Japan.

PROCEEDINGS IN CONFERENCE ROOM
ON

Hearing on Application of Defense
Counsel for the Accused, HATA, Shunroku
(Request and Supplemental Request) for
the production of a witness pursuant to
Section III, Article 9, Subsection "e"
of the Charter of the International Mil-
itary Tribunal for the Far East, dated
26 April, 1946 and 26 June, 1946.

Before:

HON. SIR WILLIAM WEBB, President
of the Tribunal and Member from
the Commonwealth of Australia.

Reported by:
John J. Smith

Appearances:

For the Prosecution Section:

MR. CARLISLE W. HIGGINS, Acting Chief
Counsel, representing Mr. Joseph
B. Keenan, acting on behalf of the
United Kingdom of Great Britain
and Northern Ireland

MR. JUSTICE A. J. MANSFIELD, Associate
Counsel, acting on behalf of the
Commonwealth of Australia; and

MR. EUGENE B. WILLIAMS

For the Defense Section:

LIEUTENANT ARISTIDE G. LAZARUS
MR. KANZAKI, Masayoshi,
Counsel for Accused HATA; and
MR. OWEN CUNNINGHAM

For the Office of General Secretary, IMTVE:

EDWARD H. DELL, Judge,
Legal Adviser to the Secretariat;

VIRNE WALBRIDGE, Colonel, CAC,
General Secretary

MR. G. WALTER BOWMAN, Clerk of the Court.

For the Language Section:

ENSIGN DAVID F. HORNSTEIN, Chief.

THE PRESIDENT: This is an application for the subpoenaing of a witness for the defense. The application is made by the accused, HATA, Shunroku. Who appears for the application?

LIEUTENANT LAZARUS: We do, sir.

THE PRESIDENT: Take your seat. Have you all the material?

LIEUTENANT LAZARUS: Which material is it that you wish, sir?

THE PRESIDENT: Someone has to set forth certain facts and the particulars relative to the application.

LIEUTENANT LAZARUS: I believe they are in the papers, but you want the information on which we base these remarks, sir?

THE PRESIDENT: Yes.

LIEUTENANT LAZARUS: The only thing I can say is, at this stage of the proceedings, the information is derived from copies of reports I picked up in the Dai Ichi Building, which show, as far as we know, that it was HATA, Hikosaburo, who was responsible for the acts charged in the 25th and 26th counts of the Indictment. He was Chief of Staff of the Kwantung Army when Russia entered the war. This defendant whom we represent states that it was this officer who was responsible for those acts, and that this can be proved beyond a

reasonable doubt, and that it was this other officer who was responsible for those acts, and that it was not he.

THE PRESIDENT: Do you want to summons this man? What is his name?

LIEUTENANT LAZARUS: HATA, Hikosaburo. He was Chief of Staff in the Kwantung Army when Russia entered the war, and was head of the Supreme Military Command.

THE PRESIDENT: He is a Japanese?

LIEUTENANT LAZARUS: That is correct.

THE PRESIDENT: Where is he now?

LIEUTENANT LAZARUS: Sir, we have information that he was a prisoner of war when the Kwantung Army was surrendered.

THE PRESIDENT: He is out of the jurisdiction of the Supreme Commander?

LIEUTENANT LAZARUS: We do not know if he was ever repatriated. The best information we have is that he was not. Perhaps an examination of the records of the High Command would show that he has been repatriated. I have made every effort to ascertain this, and I am sure they do not know.

THE PRESIDENT: The purpose is to get this evidence to show that he and not the accused is responsible for the acts alleged in the Indictment?

LIEUTENANT LAZARUS: That is correct.

MR. JUSTICE MANSFIELD: We are quite

satisfied of every detail, after checking all matters which might relate to either of the parties. In 1938, the defendant, HATA, was Commander-in-chief of the Expeditionary Force to Central China. That is the date to which counsel refers to. During the summer of 1939, he was responsible for the attack on Manchuria. At that time, he was War Minister and President of the Manchurian Affairs Board. We are quite satisfied that we have the right man. A lot of publicity has been put forth in the newspapers with regard to mistaken identity. The prosecution does not, of course, desire to take any particular stand on that, but it certainly is most advisable that any member of the defense should not be permitted to publicize in the newspapers matters of this description. However, as far as the prosecution is concerned, we are perfectly satisfied that the man we have named in the Indictment is the man who is responsible for the matters set out in Counts 25 and 26 of the Indictment.

LIEUTENANT LAZARUS: We put ourselves entirely in the hands of the Court. We would like this subpoena to issue, whether the evidence develops to be relevant or irrelevant. The relevancy and materiality of the evidence can be determined by the Court.

THE PRESIDENT: Under the Charter, the Court has to exercise some supervision over calling of the witnesses. Nevertheless, in this instance; I will allow the subpoena to be issued.

MR. JUSTICE MANSFIELD: An order was made with regard to certain witnesses the prosecution desired from China. I understand that the order in some form was made, and I think the witness came into Japan and then the subpoena was served in Japan.

THE PRESIDENT: That was my idea because of the question of foreign jurisdiction; but, assuming that this man is in the jurisdiction of the Supreme Commander, there will be no need for a request for a subpoena at this stage.

MR. JUSTICE MANSFIELD: With regard to being in the jurisdiction, I understand he is not in Japan,

THE PRESIDENT: Apparently, he is not in Japan.

LIEUTENANT LAZARUS: We believe that is so. That is the last information we have - that he is not in Japan.

THE PRESIDENT: When do you want the man here?

LIEUTENANT LAZARUS: As soon as possible. We want to ascertain what all the facts are, and lay all the information before the Tribunal.

APPLICATION GRANTED

(Hearing on this motion was concluded
at 9:10 A. M.)